

1 GLENN D. DASSOFF (SBN 96809)
2 gdassoff@orrick.com
KRISTOPHER R. WOOD (SBN 284727)
3 kristopher.wood@orrick.com
ORRICK, HERRINGTON & SUTCLIFFE LLP
4 2050 Main Street
Suite 1100
Irvine, CA 92614-8255
5 Telephone: +1 949 567 6700
Facsimile: +1 949 567 6710

6
7 Attorneys for Plaintiff/Counter-Defendant,
STRETCH LAB FRANCHISE, LLC and Third-Party
Defendant, ANTHONY GEISLER

8
9
10 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 STRETCH LAB FRANCHISE, LLC,
12 Plaintiff,
13 v.
14 STRETCH LAB, LLC; SAUL C.
JANSON; and TIMOTHY TROST,
15 Defendants.

16 STRETCH LAB, LLC, a California
17 limited liability company; SAUL
JANSON, an individual; and TIMOTHY
TROST, an individual,
18 Counter-Claimants,
19 v.

20 STRETCH LAB FRANCHISE, LLC, a
Delaware limited liability company; and
21 DOES 1-10, inclusive,
22 Counter-Defendant.

23 STRETCH LAB, LLC, a California
limited liability company; SAUL
JANSON, an individual; and TIMOTHY
TROST, an individual,
24 Third-Party Claimants,
25 v.

26 ANTHONY GEISLER, an individual;
And DOES 1-10, inclusive,
27 Third-Party Defendant

28 Case No. 2:18-cv-07816-GW (SSx)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO ENFORCE
SETTLEMENT AGREEMENT**

**REDACTED VERSION OF
DOCUMENT PROPOSED TO BE
FILED UNDER SEAL**

Date: December 9, 2021
Time: 8:30 a.m.
Courtroom: 9D
Judge: Hon. George H. Wu

Remote hearing requested.

TABLE OF CONTENTS

	Page
2	
3	I. INTRODUCTION..... 1
4	II. STATEMENT OF FACTS..... 2
5	A. The Parties Negotiate and Execute A Settlement Agreement, 6 Including A Broad [REDACTED] 2
7	B. Saul Janson Violates The [REDACTED] 5
8	III. ARGUMENT 6
9	A. The Court Has Authority And Jurisdiction To Enforce The 10 Settlement Agreement..... 6
11	B. [REDACTED] Is Unambiguous, As Is Saul 12 Janson's Breach..... 7
13	C. SLF Is Entitled To Attorney's Fees and Damages..... 10
14	D. Saul Janson And SLF Should Be Enjoined From Continuing To 15 Make Disparaging Statements..... 11
16	IV. CONCLUSION..... 12

TABLE OF AUTHORITIES

	Page(s)
Federal Cases	
<i>Callie v. Near</i> , 829 F.2d 888 (9th Cir. 1987).....	6
<i>In re City Equities Anaheim, Ltd.</i> , 22 F.3d 954 (9th Cir. 1994).....	6
<i>Facebook, Inc. v. ConnectU, Inc.</i> , No. C 07-01389 JW, 2008 WL 8820476 (N.D. Cal. June 25, 2008).....	7, 8
<i>Harrop v. W. Airlines, Inc.</i> , 550 F.2d 1143 (9th Cir. 1977).....	6
<i>Maynard v. City of San Jose</i> , 37 F.3d 1396 (9th Cir. 1994).....	6
<i>TNT Mktg., Inc. v. Agresti</i> , 796 F.2d 276 (9th Cir. 1986).....	6, 10, 11
<i>Upwork Glob. Inc. v. Fan Lian</i> , No. 19-CV-07719-NC, 2021 WL 1080526 (N.D. Cal. Mar. 2, 2021).....	11, 12

1 Plaintiff and Counter-Defendant Stretch Lab Franchise, LLC (“SLF”)
2 respectfully moves for this Court to enforce the September 9, 2019 Confidential
3 Settlement Agreement and Mutual Release of Claims (the “Settlement Agreement”)¹
4 entered between SLF and Anthony Geisler (“Geisler”), on the one hand, and
5 Defendants/Counter-Claimants/Third-Party Plaintiffs Saul Janson (“Janson”),
6 Timothy Trost (“Trost”), and Stretch Lab LLC (“SL”) (collectively with SLF and
7 Geisler, the “Parties”). Under Sections 8(c) and 11(a) of the Settlement Agreement,
8 the Parties agreed that this Court would retain jurisdiction to resolve any disputes
9 thereunder. SLF brings the instant Motion now to address a flagrant breach by Janson
10 of the non-disparagement provisions in Section 8(a) of the Settlement Agreement.

11 **I. INTRODUCTION**

12 After extensive negotiations, on September 9, 2019, the Parties entered the
13 Settlement Agreement, which included a broad, carefully drafted [REDACTED]
14 [REDACTED] prohibiting Defendant Saul Janson and the other defendants
15 from [REDACTED]
16 [REDACTED] [REDACTED] [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED] *Id.* This [REDACTED] was
21 a necessary part of the Settlement Agreement that SLF insisted on because
22 throughout the litigation, Janson had demonstrated extreme animosity towards SLF,
23 its employees, its owner (Xponential Fitness, LLC, or “Xponential”), and Geisler;
24 and had a long history of making disparaging statements about SLF and its directors,
25 officers, and representatives.

26 Despite agreeing to be bound by the terms of the Settlement Agreement,
27

28

¹ The Settlement Agreement is included with the Declaration of Glenn Dassoff in support of this Motion as Exhibit A.

1 Janson explicitly and intentionally violated the [REDACTED]
2 [REDACTED]
3 [REDACTED] under the Settlement Agreement. Immediately after receiving [REDACTED]
4 [REDACTED] Janson violated the [REDACTED] by
5 sending SLF's President a malicious email falsely accusing him of [REDACTED]
6 [REDACTED] would
7 not only be extremely damaging to SLF's President's reputation and character, but
8 also to the SLF brand. As if that wasn't enough, Janson also directly attacked the
9 President of SLF's wife, [REDACTED]
10 [REDACTED] See Declaration of Louis DeFrancisco
11 ("DeFrancisco Decl.") ¶4, Ex. A (October 12, 2021 Email from Saul Janson to Louis
12 DeFrancisco). Unless Janson is faced with monetary consequences for violating the
13 [REDACTED] and is enjoined from continuing to make such
14 disparaging statements, there is no doubt Janson will simply continue this bad faith
15 conduct and escalate this just as he has in the past. SLF respectfully requests that the
16 Court enforce the Settlement Agreement, enjoin Janson from making disparaging
17 statements or representations under the Settlement Agreement, order Janson to pay
18 SLF at least \$10,043 in attorney's fees in bringing this Motion to Enforce the
19 Settlement Agreement, and compel Janson to pay damages up to \$50,000 for
20 violating the Settlement Agreement.

21 **II. STATEMENT OF FACTS**

22 **A. The Parties Negotiate and Execute A Settlement Agreement,**
23 **Including A Broad [REDACTED]**

24 On September 7, 2018, SLF filed a lawsuit against Janson, Trost, and SL
25 ("Defendants") in this Court (the "Action"), asserting causes of action for breach of
26 contract regarding a November 15, 2017 Asset Purchase Agreement between the
27 Parties, breach of the implied covenant of good faith and fair dealing, breach of
28 consulting agreements between SLF and Janson and Trost, declaratory relief

1 regarding the Consulting Agreements, trademark infringement, and violations of
2 federal and California unfair competition law. On October 25, 2018, Defendants
3 filed counterclaims against SLF and a third-party complaint against Geisler. On
4 March 18, 2019, Defendants filed an additional counterclaim and third-party claim
5 against SLF and Geisler, respectively.

6 On July 12, 2019, during a Settlement Conference, the Parties participated in
7 mediation before the Court, with the Honorable George H. Wu acting as mediator.
8 The Parties were able to reach a settlement agreement and agreed to the terms on the
9 record. [REDACTED]

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 [REDACTED] See Declaration of Glenn Dassoff (“Dassoff
15 Decl.”) ¶ 3, Ex. B (Transcript of Settlement Conference Hearing at 6:3-14).

16 Per the Court’s instruction that the Parties enter into a long-form Settlement
17 Agreement memorializing and elaborating upon the terms stated on the record during
18 the July 12, 2019 Settlement Conference, the Parties entered into the long-form
19 Settlement Agreement on September 9, 2019. [REDACTED]

20 [REDACTED]
21 [REDACTED]
22 [REDACTED] Settlement Agreement § 1.

23 Further, under the Settlement Agreement, Defendants memorialized their
24 agreement to a broad [REDACTED], which states:

25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1
2
3
4
5
6
7

8 *Id.* § 8(a).

9 This Court may recall that the Settlement Agreement was the result of
10 extensive negotiations between the Parties and their respective counsel, including
11 specific negotiations about the breadth of the [REDACTED]. The
12 Settlement Agreement's broad [REDACTED] was a critical part of
13 the Settlement Agreement because, throughout the period leading up to the Action
14 and during the Action itself, Janson became increasingly agitated and prone to
15 making disparaging statements to others. For example, Janson has sent numerous
16 emails to SLF's officers and third parties, including emails addressed to "StretchLab
17 Investors" calling Geisler and SLF's officers and directors [REDACTED]
18 [REDACTED]

19 [REDACTED] See Dassoff Decl. ¶¶ 4-8, Exs. C-G (Exhibits 15, 17, 28,
20 29, and 30 of Saul Janson's April 26, 2019 Deposition). Janson's outbursts were so
21 severe that even his partner, Timothy Trost, sent an email to SLF's President Lou
22 DeFrancisco stating that he would [REDACTED] See Dassoff Decl. ¶ 4, Ex. C
23 (Exhibit 15 of Saul Janson's April 26, 2019 Deposition).

24 Having witnessed Janson's increasingly erratic and antagonistic conduct over
25 the course of more than a year, SLF and Geisler had little faith that Janson could be
26 trusted to let bygones be bygones after settlement of the Action. Thus, the inclusion
27 of this broad [REDACTED] in the Settlement Agreement was a key
28 element of the settlement for SLF and Geisler. The [REDACTED]

1 provided SLF and Geisler with peace of mind that they and their representatives
2 would no longer have to worry about such inappropriate and harmful statements by
3 Janson or the other defendants arising from this Action. Janson's recent conduct,
4 however, proves those concerns were well-founded.

5 **B. Saul Janson Violates The** [REDACTED]

6 Despite agreeing to be bound by the terms of the Settlement Agreement,
7 Janson nonetheless willfully violated the [REDACTED]. Indeed, on
8 October 12, 2021, just 12 days after receiving the [REDACTED]
9 [REDACTED], and consistent with his prior bad faith conduct of
10 making disparaging statements, Janson sent an email to SLF's President stating, in
11 relevant part:

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 *See DeFrancisco Decl. ¶ 4, Ex. A.* Janson included the signature line "StretchLab
19 Co-Founder" in his email, indicating he sent the email in his capacity as an officer of
20 SL. *Id.* ¶ 5.

21 The timing of this email is further evidence of Janson's understanding that his
22 conduct was a violation of the Settlement Agreement—[REDACTED]

23 [REDACTED]
24 [REDACTED]. *Id.* ¶ 3. In other
25 words, as soon as Janson felt he was no longer at risk of disrupting further payments
26 under the Settlement Agreement, he let fly with his malicious statements.

27 //
28 //

1 **III. ARGUMENT**

2 **A. The Court Has Authority And Jurisdiction To Enforce The**
3 **Settlement Agreement**

4 Under federal law, a district court has the power to summarily enforce a
5 settlement agreement in an action pending before it. *In re City Equities Anaheim,*
6 *Ltd.*, 22 F.3d 954, 957 (9th Cir. 1994); *Callie v. Near*, 829 F.2d 888, 890 (9th Cir.
7 1987); *TNT Mktg., Inc. v. Agresti*, 796 F.2d 276, 278 (9th Cir. 1986). Indeed, this
8 Court retained jurisdiction over the Action even after the Parties settled for this
9 express purpose. See Dassoff Decl. ¶ 3, Ex. B (Transcript of Settlement
10 Conference Hearing at 4:3-6).

11 To be enforced, a settlement agreement must meet two requirements. First,
12 the settlement agreement must be a complete agreement. *Maynard v. City of San*
13 *Jose*, 37 F.3d 1396, 1401 (9th Cir. 1994); *Callie*, 829 F.2d at 890. Second, both
14 parties must have either agreed to the terms of the settlement or authorized their
15 respective counsel to settle the dispute. *Harrop v. W. Airlines, Inc.*, 550 F.2d 1143,
16 1144-45 (9th Cir. 1977). In enforcing the agreement, the court may order the
17 specific performance of any party and may award damages for noncompliance with
18 the agreement. See *TNT Mktg.*, 796 F.2d at 278.

19 Here, this Court has authority and jurisdiction to enforce the Settlement
20 Agreement. There is no dispute that the Settlement Agreement is a complete
21 agreement and that the Parties, through their respective counsel, agreed to and
22 executed the terms of the Settlement Agreement on September 9, 2019. Indeed,
23 [REDACTED] pursuant to
24 the Settlement Agreement. The Parties also agreed under the Settlement
25 Agreement that [REDACTED]
26 [REDACTED] Settlement
27 Agreement § 8(c) [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]; see
5 also *Facebook, Inc. v. ConnectU, Inc.*, No. C 07-01389 JW, 2008 WL 8820476, at
6 *3 (N.D. Cal. June 25, 2008) (holding that the court has “jurisdiction and authority
7 to enforce the Agreement without requiring additional pleadings” because “in
8 addition to its inherent authority and the authority conferred by California law, in
9 Paragraph 4 of the Agreement, the parties explicitly stipulated that the Court has
10 authority to exercise enforcement”).

11 B. [REDACTED] **Is Unambiguous, As Is Saul**
12 **Janson’s Breach**

13 Under Section 8(a) of the Settlement Agreement, Janson, along with Trost
14 and SL, agreed that they [REDACTED]

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 Settlement Agreement § 8(a) (emphasis added).

22 The same section then clearly defines [REDACTED]

23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]² *Id.* (emphasis added). [REDACTED]

27 ² For the avoidance of doubt, this motion is not subject to Section 11(b)’s [REDACTED]
28 [REDACTED] because there is no [REDACTED]
[REDACTED] “ given that Section 8(a)’s [REDACTED]

1 [REDACTED]
2 [REDACTED] . *Id.* [REDACTED]
3 [REDACTED]

4 [REDACTED] *Id.*

5 Janson appears to believe that he is no longer bound by the Settlement
6 Agreement [REDACTED]—despite the fact that the [REDACTED]
7 [REDACTED] is clearly still in effect. *See* DeFrancisco Decl. ¶ 4, Ex. A.
8 While fully aware of the extensively negotiated terms of the Settlement Agreement,
9 Janson explicitly and intentionally violated the [REDACTED] of the
10 Settlement Agreement by making a [REDACTED] via email—in his capacity as
11 an officer of SL—accusing SLF’s President—“
12 [REDACTED], among other
13 malicious and inappropriate accusations in clear breach of the [REDACTED]
14 [REDACTED] *See id.* [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED] This [REDACTED] about [REDACTED]
20 [REDACTED] would certainly
21 [REDACTED]
22 [REDACTED] *See*
23 Settlement Agreement § 8(a).

24 These disparaging statements were particularly harmful to Mr. DeFrancisco, a
25 father, husband, and community and business leader, who takes his integrity and
26 reputation very seriously. *See* DeFrancisco Decl. ¶¶ 6-7. If such statements made
27 _____
28 [REDACTED]

1 by Janson were made public or directed to any of the current or prospective SLF
2 franchisees in the United States, they would have the potential to severely undermine
3 SLF's business operations and continued success. *See id.* ¶ 8. Mr. DeFrancisco has
4 put in significant effort over the past four years to build trust and goodwill between
5 himself, as SLF's President, and the SLF franchisees, which has contributed to the
6 success of SLF. *See id.* ¶ 9. And in this time, he has built up a solid reputation as a
7 President that cares about the success of SLF's franchise partners. *Id.*

8 The franchise partners invest several hundred thousand dollars per location to
9 open a StretchLab location, and the decision to become a franchise partner is a major
10 life decision. *See id.* ¶ 10. Mr. DeFrancisco is responsible for onboarding SLF's
11 franchise partners, and they place significant trust and faith in him through their due
12 diligence process investigating SLF and Xponential. *Id.* Most of the SLF franchise
13 partners have Mr. DeFrancisco's personal cell number, and Mr. DeFrancisco has
14 created a relationship and environment where the franchise partners can feel free to
15 call or text him anytime with any concerns. *See id.* If current franchise partners were
16 to hear a rumor that he [REDACTED] or any of the other disparaging statements
17 in Janson's email or similar statements, that would erode the trust Mr. DeFrancisco
18 has built with them over the past several years and would likely cause them to
19 question whether they should continue to open more StretchLab locations. *See id.* ¶
20 11. And if new franchise partners or franchise prospects were to hear of this rumor,
21 that would impact their decisions to commit to spending several hundred thousand
22 dollars on opening a StretchLab location. *See id.* ¶ 12. StretchLab has become the
23 hottest, fastest growing brand in the Xponential Fitness portfolio. *See id.* ¶ 15. If the
24 malicious and false accusations by Janson were to be made public, it would be
25 extremely damaging to not only Mr. DeFrancisco's reputation and character, but also
26 to the SLF brand and broader Xponential Fitness brand. *See id.* ¶¶ 13-15.

27 The [REDACTED] is a critical part of the Settlement
28 Agreement because, as demonstrated above, Janson has a long history of making

1 disparaging statements against SLF and its officers, directors, and representatives.
2 And he clearly still harbors a great deal of animosity and ill-will toward SLF and its
3 associates, despite the passage of time and the generous terms of the Settlement
4 Agreement. Janson may not disregard the [REDACTED] that he
5 expressly agreed to just because [REDACTED]
6 [REDACTED] Unless Janson is faced with monetary consequences for violating the [REDACTED]
7 [REDACTED] and is enjoined from continuing to make such disparaging
8 statements, it is likely that he will simply continue this bad faith conduct and make
9 disparaging statements in violation of the Settlement Agreement.

10 **C. SLF Is Entitled To Attorney's Fees and Damages**

11 Plaintiff respectfully requests that the Court compel Janson to pay damages
12 up to \$50,000 for violating the Settlement Agreement and order Janson to pay SLF
13 at least \$10,043 in attorney's fees in bringing this Motion to Enforce the Settlement
14 Agreement.

15 A district court has authority to award damages against the party in breach of
16 a settlement agreement. *TNT Mktg.*, 796 F.2d at 278. Further, the Settlement
17 Agreement specifically sets out that the Court shall have discretion to impose
18 damages for violation of the [REDACTED] in an amount up to
19 \$50,000. *See* Settlement Agreement § 8(c). Damages imposed on Janson for
20 breach of the [REDACTED] are appropriate here because, unless
21 there is a direct financial repercussion against Janson arising out of this conduct,
22 there will be nothing to stop Janson from continuing to violate the [REDACTED]
23 [REDACTED]

24 Separately, the Settlement Agreement contains an attorney's fees provision,
25 which allows the prevailing party to seek attorney's fees in any dispute arising out
26 the Settlement Agreement [REDACTED]

27 [REDACTED] Settlement Agreement § 11(d). Section 11(d) specifically provides:
28

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 *Id.*

6 If the Court finds that Janson violated the [REDACTED] of
7 the Settlement Agreement, it should also order Janson to pay reasonable attorney's
8 fees to SLF incurred to enforce this Settlement Agreement. To date, SLF has
9 incurred at least \$10,043 in reasonable attorney's fees to bring this motion. Dassoff
10 Decl. ¶¶ 9-10. SLF anticipates that it will incur additional attorney's fees on this
11 issue, such as in preparing a reply to Janson's opposition to this motion and
12 attending the hearing. To the extent additional attorney's fees are incurred on this
13 issue, SLF will provide updated records to support this request.

14 **D. Saul Janson And SLF Should Be Enjoined From Continuing To**
15 **Make Disparaging Statements**

16 The Court also has authority to order the specific performance of any party.
17 *TNT Mktg.*, 796 F.2d at 278. Further, Section 11(e) of the Settlement Agreement
18 provides that [REDACTED]

19 [REDACTED] Settlement Agreement § 11(e).

20 Janson should be enjoined from continuing to make disparaging statements
21 because he is legally barred from doing so under the Settlement Agreement.
22 Further, Mr. DeFrancisco and SLF will face irreparable harm to their reputation and
23 goodwill unless Janson is enjoined from continuing to act in bad faith and making
24 disparaging statements against them. *See Upwork Glob. Inc. v. Fan Lian*, No. 19-
25 CV-07719-NC, 2021 WL 1080526, at *6 (N.D. Cal. Mar. 2, 2021). Remedies
26 available at law are inadequate to compensate for that injury; the hardship that
27 Janson might experience if he is enjoined from making disparaging statements in
28 accordance with the [REDACTED] is minimal in comparison to Mr.

1 DeFrancisco and SLF's reputational harm; and it is in the public's interest for the
2 Court to give effect to a binding Settlement Agreement and enjoin unlawful
3 conduct. *See id.*

4 **IV. CONCLUSION**

5 For the foregoing reasons, SLF respectfully requests that the Court enforce
6 the Settlement Agreement, enjoin Janson from making disparaging statements or
7 representations under Section 8 of the Settlement Agreement, order Janson to pay
8 SLF at least \$10,043 in attorney's fees in bringing this Motion to Enforce the
9 Settlement Agreement, and compel Janson to pay damages up to \$50,000 for
10 violating the Settlement Agreement.

11

12 Dated: November 5, 2021

ORRICK, HERRINGTON & SUTCLIFFE LLP

13

14

By: /s/ Glenn D. Dassoff

15

GLENN D. DASSOFF
KRISTOPHER R. WOOD

16

17

Attorneys for Plaintiff/Counter-Defendant,
STRETCH LAB FRANCHISE, LLC and Third-
Party Defendant, ANTHONY GEISLER

18

19

20

21

22

23

24

25

26

27

28